Md Zainudin bin Raujan v Public Prosecutor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–220 OF 2011(J)
ARIFIN ZAKARIA CHIEF JUSTICE, ZULKEFLI CJ (MALAYA), ABDULL HAMID EMBONG, HASAN LAH AND ZAINUN ALI FCJJ
15 APRIL 2013

Criminal Procedure — Appeal — Appeal against conviction and sentence — Three charges of trafficking in dangerous drugs — Accused convicted and sentenced to death — Admittance of drugs possession — Admittance by accused reduced into writing on paper — Accused cautioned under s 27 of the Evidence Act 1950 — Location of drugs given by accused — Whether s 27 information prejudiced accused — Whether there were gaps in prosecution's case — Dangerous Drugs Act 1952 s 39B(1)(a)

Evidence — Exhibit — Cautioned statement — Admittance of drugs possession — Admittance by accused reduced into writing on paper — Accused cautioned under s 27 of the Evidence Act 1950 — Location of drugs given by accused — Whether s 27 information prejudiced accused

Acting upon information received, PW5 and a police party raided a house and arrested the appellant who admitted to PW5 that he had kept drugs in his father's orchard. PW5 cautioned the appellant, as prescribed under s 37A of the Dangerous Drugs Act 1952 ('DDA') and reduced the said information into writing on paper ('exh P17') pursuant to s 27 of the Evidence Act 1950 ('the Act'). The appellant affixed his signature twice on P17. PW5 and his men together with the appellant then headed to the address given in P17. A search in the house revealed nothing incriminating. The appellant then led PW5 and his men to the orchard behind the house and pointed to an old cupboard where plastic packets containing substances suspected to be heroin were found. In the orchard, the appellant pointed to four different spots which were actually mounds of fallen coconut trees and more drugs were recovered from there. In his defence, the appellant testified that he was assaulted by the police; he was arrested and brought back to the police station together with his wife and his children; he was assaulted at the police station again; exh P17 was not signed by him at the police station but it was signed at his father's house; he did not inform PW5 that he kept the drugs at the orchard behind his father's house; the police went to his father's house based on the address in his identification card; he was brought to a mosque near his father's house and was brought to his father's house about one hour later; he and seven other persons were brought to

the orchard; the police recovered the drugs from the old cupboard and the coconut mounds by themselves; and that he did not point to the various spots where the drugs were concealed. At the High Court, the appellant was convicted for three charges of trafficking in dangerous drugs, an offence under s 39B(1)(a) of the DDA and was sentenced to death. The appellant then appealed to the Court of Appeal and raised the issues that the learned trial judge misdirected himself when he admitted the s 27 information to the prejudice of the appellant; the learned trial judge seriously erred when he ruled that PW5 was credible, contrary to the evidence adduced; the learned trial judge failed to recognise that the prosecution's failure to call other witnesses had created gaps in its own case; and that the learned trial judge failed to appreciate the defence's case. The appeal was dismissed by the Court of Appeal and hence, the present appeal. In the present appeal, the appellant couched on the same grounds that were raised in the Court of Appeal.

Held, dismissing the appeal and affirming the convictions and setences imposed by the High Court:

(1) Assessing credibility is difficult and is best left to the trial judge who had the audio-visual advantage of a witness in action. The learned trial judge had correctly evaluated PW5's evidence and found him to be a credible witness. The Court of Appeal had further assessed the learned trial judge's evaluation of that evidence and agreed with the learned judge's conclusion. The court had come to the same conclusion that PW5 was a credible witness and that there were no compelling reasons which required appellate interference (see paras 38–39).

(2) The drugs allegedly found in the appellant's house were not the subject matter of the three charges in the instant case. It was not the defence case that the police assaulted the appellant to obtain information relating to the drugs which were the subject matter of the three charges in the instant case. Under the circumstances, there was no reason for the learned trial judge to exercise his discretion to exclude the information supplied by the appellant on the ground that the appellant was assaulted. There was therefore no non-direction on this issue (see paras 45 & 48).

(3) The court accepted PW5's explanation and agreed with the learned trial judge's finding that the arrested persons were never brought to the places where the drugs were recovered. As to the issue of whether the appellant pointed out to the spots where the drugs were buried, the court agreed with the finding of the learned trial judge who accepted the version given by PW5 (see para 51).

(4) PW5 was a police witness. The learned trial judge found him to be a credible witness. Although the prosecution's case rested solely on the evidence on PW5, under the law there was no requirement for his evidence to be corroborated. The learned trial judge believed PW5 and as

such his evidence was sufficient to establish the case for the prosecution. Any requirement for PW5's evidence to be corroborated will conflict with s 134 of the Act which provided that no particular number of witnesses shall in any case be required for proof of any fact (see para 55).

(5) The appellant's version of facts was not relevant to the offences in the instant appeal. They were only relevant for the defence in the charge relating to the drugs found in the appellant's house for which he was charged in the magistrate court. As such the evidence relating to those facts could not give rise to a doubt in the prosecution's case in the instant appeal (see para 60).

(6) The totality of the evidence put forth by the appellant was a mere denial and was insufficient to cast a reasonable doubt on the prosecution's case. The appellant also failed to rebut the statutory presumption of trafficking invoked against him. On the evidence, the court agreed with the findings of the learned trial judge and the Court of Appeal judge that the defence had failed to cast a reasonable doubt on the prosecution's case (see para 62).

[Bahasa Malaysia summary

Bertindak atas maklumat yang diterima, PW5 dan pasukan polis telah menyerbu sebuah rumah dan menangkap perayu yang mengaku kepada PW5 bahawa dia menyimpan dadah di kebun bapanya. PW5 memberi amaran kepada perayu, sebagaimana ditetapkan di bawah s 37A Akta Dadah Berbahaya 1952 ('ADB') dan memberikan maklumat secara bertulis di atas sekeping kertas ('eksh P17') menurut s 27 Akta Keterangan 1950 ('Akta tersebut'). Perayu telah menurunkan tandatangannya sebanyak dua kali di atas P17. PW5 dan pasukan polisnya bersama dengan perayu kemudian menuju ke alamat yang diberikan dalam P17. Satu carian dalam rumah itu tidak menunjukkan apa-apa yang membabitkan kesalahan. Perayu kemudian membawa PW5 dan pasukannya ke kebun di belakang rumah dan menunjuk ke arah almari lama di mana bungkusan plastik mengandungi bahan yang disyaki heroin telah ditemui. Di kebun itu, perayu menunjuk ke empat kawasan berlainan yang sebenarnya adalah timbunan pokok kelapa yang tumbang dan lebih banyak dadah ditemui di situ. Dalam pembelaannya, perayu memberi keterangan bahawa dia telah diserang oleh polis; dia telah ditangkap dan dibawa ke balai polis bersama isterinya dan anak-anaknya; dia diserang di balai polis sekali lagi; eksh P17 bukan ditandatangani olehnya di balai polis tetapi telah ditandatangan di rumah bapanya; dia tidak memberitahu PW5 bahawa dia menyimpan dadah di kebun di belakang rumah bapanya; polis telah ke rumah bapanya berdasarkan alamat pada kad pengenalannya; dia dibawa ke masjid berdekatan rumah bapanya dan dibawa ke rumah bapanya lebih kurang satu jam kemudian; dia dan tujuh orang lain telah dibawa ke kebun itu; polis menjumpai dadah dari almari lama itu dan timbunan kelapa dengan sendiri; dan bahawa dia tidak menunjuk kepada

beberapa kawasan di mana dadah itu disembunyikan. Di Mahkamah Tinggi, perayu telah disabit kerana tiga pertuduhan mengedar dadah berbahaya; satu kesalahan di bawah s 39B(1)(a) ADB dan dihukum mati. Perayu kemudian telah merayu kepada Mahkamah Rayuan dan menimbulkan isu-isu bahawa hakim perbicaraan yang bijaksana telah salah arah apabila beliau menerima maklumat s 27 sehingga menjejaskan perayu; hakim perbicaraan yang bijaksana telah gagal apabila dia memutuskan bahawa PW5 boleh dipercayai, bertentangan dengan keterangan yang dikemukakan; hakim perbicaraan yang bijaksana telah gagal menyedari yang kegagalan pendakwaan untuk memanggil saksi-saksi lain telah membentuk jurang dalam kesnya sendiri; dan bahawa beliau telah gagal memahami kes pembelaan. Rayuan itu telah ditolak oleh Mahkamah Rayuan dan justeru, rayuan ini. Dalam rayuan ini, perayu bersandarkan alasan-alasan sama yang ditimbulkan di Mahkamah Rayuan.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman yang dikenakan oleh Mahkamah Tinggi:

(1) Adalah sukar menilai kebolehpercayaan dan adalah baik diserahkan kepada hakim perbicaraan yang mempunyai kelebihan audio visual saksi yang beraksi. Hakim perbicaraan yang bijaksana dengan betul telah menilai keterangan PW5 dan mendapati yang dia adalah saksi yang boleh dipercayai. Mahkamah Rayuan selanjutnya telah meneliti penilaian hakim perbicaraan yang bijaksana berhubung keterangan tersebut dan bersetuju dengan kesimpulan hakim yang bijaksana. Mahkamah telah tiba kepada kesimpulan sama bahawa PW5 merupakan saksi yang boleh dipercayai dan bahawa tiada sebab-sebab menarik yang memerlukan campur tangan di peringkat rayuan (lihat perenggan 38–39).

(2) Dadah yang dikatakan telah ditemui dalam rumah perayu bukan perkara pokok kepada tiga pertuduhan dalam kes ini. Ia bukan untuk kes pembelaan agar polis yang menyerang perayu mendapatkan maklumat berkaitan dadah itu yang merupakan perkara pokok tiga pertuduhan dalam kes ini. Dalam keadaan berikut, tiada sebab untuk hakim perbicaraan yang bijaksana menggunakan budi bicara beliau untuk mengecualikan maklumat yang diberikan oleh perayu atas alasan bahawa perayu telah diserang. Oleh itu tiada isu tiada arahan di sini (lihat perenggan 45 & 48).

(3) Mahkamah menerima penjelasan PW5 dan bersetuju dengan penemuan hakim perbicaraan yang bijaksana bahawa orang-orang yang ditangkap itu tidak pernah dibawa ke tempat-tempat di mana dadah itu ditemui. Berhubung itu sama ada perayu menunjuk ke arah kawasan-kawasan di mana dadah itu ditanam, mahkamah bersetuju dengan penemuan hakim perbicaraan yang bijaksana yang menerima versi diberikan oleh PW5 (lihat perenggan 51).

(4) PW5 adalah saksi polis. Hakim perbicaraan yang bijaksana

A mendapatinya seorang saksi yang boleh dipercayai. Walaupun kes pendakwaan berdasarkan semata-mata atas keterangan PW5, di bawah undang-undang tiada keperluan untuk keterangannya disokong. Hakim perbicaraan yang bijaksana mempercayai PW5 dan oleh itu keterangannya dalah mencukupi untuk membuktikan kes pendakwaan. B Apa-apa keperluan untuk keterangan PW5 disokong akan bercanggah dengan s 134 Akta tersebut yang memperuntukkan bahawa tiada bilangan khusus saksi dalam mana-mana kes hendaklah dikehendaki membuktikan apa-apa fakta (lihat perenggan 55).

C (5) Versi fakta perayu tidak relevan kepada kesalahan dalam kes ini. Ia hanya relevan kepada pembelaan dalam pertuduhan berhubung dadah yang ditemui dalam rumah perayu yang mana dia dituduh di mahkamah majistret. Oleh itu keterangan berkaitan fakta tersebut tidak menimbulkan keraguan dalam kes pendakwaan dalam rayuan ini (lihat perenggan 60).

D (6) Keseluruhan keterangan yang dikemukakan oleh perayu hanya penafian dan tidak mencukupi untuk menimbulkan keraguan munasabah ke atas kes pendakwaan. Perayu juga gagal mematahkan andaian statutori berhubung pengedaran yang dibuat terhadapnya. Berdasarkan E keterangan, mahkamah bersetuju dengan penemuan hakim perbicaraan yang bijaksana dan hakim Mahkamah Rayuan bahawa pembelaan telah gagal menimbulkan keraguan munasabah ke atas kes pendakwaan (lihat perenggan 62).]

F **Notes**

For a case on cautioned statement, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) para 1643.

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 216–222.

G **Cases referred to**

Adzhaar bin Ahmad & Anor v PP [1996] 4 MLJ 85, HC (refd)
Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)
Francis Antonysamy v PP [2005] 3 MLJ 389; [2005] 2 AMR 750, FC (refd)
H *Goi Ching Ang v PP* [1999] 1 MLJ 507, FC (refd)
Harchand Singh & Anor v State of Haryana AIR 1974 SC 344, SC (refd)
Krishna Rao Gurumurthi & Anor v PP & Another Appeal [2007] 4 CLJ 643, CA (refd)
Lee Ah Seng & Anor v PP [2007] 6 MLJ 1; [2007] 4 AMR 709, FC (refd)
I *Mat v PP* [1963] 1 MLJ 263 (folld)
Mohamed Yatin bin Abu Bakar v PP [1950] MLJ 57 (folld)
PP v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1, HC (refd)
TN Nathan v PP [1978] 1 MLJ 134 (refd)
Tan Kim Ho & Anor v PP [2009] 3 MLJ 151; [2009] 3 CLJ 236, FC (refd)

Yusoff bin Kassim v PP [1992] 2 MLJ 183, SC (refd)

Legislation referred to

Criminal Procedure Code s 182A
Dangerous Drugs Act 1952 ss 2, 37(da), 37A, 37A(2), 39B(1)(a)
Evidence Act 1950 ss 27, 134

Appeal from: Criminal Appeal No J-05–160 of 2009 (Court of Appeal, Putrajaya)

Hisyam Teh Poh Teik (Teh Poh Teik & Co) for the appellant.
Nurulhuda Nur' Aini bt Mohamad Nor (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Hasan Lah FCJ (delivering judgment of the court):

INTRODUCTION

[1] The appellant was charged with three counts of trafficking in dangerous drugs under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') and punishable under s 39B(2) of the Act. The offences were alleged to have been committed on 10 September 2004 at house No SBB-49, Sungai Balang Besar, Muar. The dangerous drugs involved were (a) 6,517g of cannabis, (b) 137.88g of heroin and (c) 139.38g of monoacetylmorphines.

[2] At the end of the trial the appellant was convicted on all the three charges and sentenced to death.

[3] The appellant's appeal to the Court of Appeal against the said convictions by the High Court was dismissed. Hence the present appeal to this court.

BACKGROUND FACTS

[4] At the close of the case for the prosecution, the narrative of the trial judge's finding of facts may be unfolded as follows.

[5] Acting on information DSP Teng Chan Chew ('PW5') and his party raided a house at No 503, Jalan Parit Jalil, Tongkang Pechah, Batu Pahat and arrested the appellant who was then brought back to Balai Polis Tongkang Pechah. In the course of interrogation the appellant admitted to PW5 that he had kept drugs in the 'kawasan kebun' (orchard) behind his father's house at No SBB 49, Sungai Balang Besar, Muar.

[6] PW5 then administered the statutory caution under s 37A of the Act to

the appellant and thereafter reduced the said information into writing on a piece of paper tendered as exh P17 pursuant to s 27 of the Evidence Act 1950. According to PW5, the appellant had also affixed his signature twice on P17.

[7] PW5 and his men together with the appellant then proceeded to the address given in P17. Chief Inspector Ramesh and S/Major Ahmad Rosli conducted a search in the house. Nothing incriminating was found.

[8] The appellant then led PW5 and his men to the orchard behind the house. According to PW5, the appellant pointed to an old cupboard. On the instruction of PW5, S/Major Ahmad Rosli searched the drawer and recovered two transparent plastic packets containing substances suspected to be heroin. In the two packets there were a total of 14 smaller packets containing substances suspected to be heroin.

[9] In the orchard the appellant pointed to four different spots which were actually mounds of fallen coconut trees. The drugs (besides the one found in the old cupboard) which were the subject matter of the charges against the appellant were recovered from the four different spots pointed out by the appellant.

[10] PW5 also arrested seven other persons where three of them were arrested at the said house, namely the appellant's parents and PW8, who came for a massage from the appellant's father. Four other witnesses, namely PW9, PW10, PW11 and Aetlas bin Abd Kamar were arrested at a motorcycle workshop in front of the house. They were there to repair their motorcycles.

[11] Mohamad Yazid bin Ibrahim ('PW6'), the government chemist, testified that the exhibits were dangerous drugs within the definition of s 2 of the Act.

THE DEFENCE CASE

[12] In his defence the appellant testified that:

(a) he was assaulted by the police in house No 503, Kampung Parit Jalil, Tongkang Pechah, Batu Pahat;

(b) he was arrested and brought back to Balai Polis Tongkang Pechah together with his wife ('DW2') and his two children;

(c) at the police station he was assaulted again;

(d) exh P17 was not signed by him at the police station but it was signed at his father's house at SBB 49, Sungai Balang Besar, Muar;

(e) he did not inform PW5 that he kept the drugs at the orchard behind his father's house;

(f) the police went to his father's house based on the address in his identification card;

(g) upon arrival at Sungai Balang Besar, Muar he was brought to a mosque near his father's house. He was brought to his father's house about one hour later;

(h) he and seven other persons were brought to the orchard; and

(i) the police recovered the drugs from the old cupboard and the coconut mounds by themselves. He did not point to the various spots where the drugs were concealed.

[13] DW2 (the appellant's wife), in examination-in-chief, testified that her husband was assaulted by the police in their house at No 503, Jalan Parit Jalil, Tongkang Pechah. She was handcuffed and was brought to Balai Polis Tongkang Pechah together with her husband and children. At the police station her husband was brought into a room. She could hear her husband being assaulted by the police. When her husband was brought out of the room she could see her husband was bleeding from his forehead.

[14] She was also brought to the house at SBB 49, Sungai Balang Besar, Muar by the police. Her husband was brought to the house two hours later. After that the police brought her husband and seven or eight other persons to the back of the house. She stayed inside the house.

[15] About one hour later her husband and the other persons were brought back to the kitchen. She saw the police put the offending drugs on a table. The police asked her husband to sign a form.

THE FINDINGS OF THE TRIAL JUDGE

[16] At the end of the prosecution's case, upon a maximum evaluation of the evidence, the learned trial judge admitted exh P17 as he ruled that the ingredients of s 27 of the Evidence Act 1952 had been fulfilled. The learned trial judge held that the prosecution had proved mens rea possession of the offending drugs against the appellant.

[17] With regard to trafficking the learned trial judge held that since the weight of the offending drugs were in excess of the minimum statutory weight under s 37(da) of the Act, the presumption of trafficking was applicable against the appellant in all the three charges. In the alternative, the learned trial judge

A further held that, on the evidence adduced, the prosecution had proved actual trafficking of the offending drugs by the appellant.

[18] With regard to the appellant's defence, the learned trial judge held that the appellant's defence was a mere denial and it did not cast any reasonable B doubt on the prosecution's case. On the presumed trafficking, the learned trial judge ruled that the appellant failed, on a balance of probability, to rebut the statutory presumption of trafficking in the offending drugs. The appellant was accordingly found guilty, convicted of the three charges proffered against him and sentenced to death.

C

THE FINDINGS OF THE COURT OF APPEAL

[19] Before the Court of Appeal the appellant raised the following four D grounds of appeal:

(a) that the learned trial judge misdirected himself when he admitted the s 27 information to the prejudice of the appellant;

(b) that the learned trial judge seriously erred when he ruled that PW5 was credible, contrary to the evidence adduced; E

(c) that the learned trial judge failed to recognise that the prosecution's failure to call other witnesses had created gaps in its own case; and

(d) that the learned trial judge failed to appreciate the defence case.

F

[20] The Court of Appeal, as reflected in its judgment, did not agree with the submission made by the appellant on those four issues and dismissed the appellant's appeal.

G THE APPEAL

[21] Before us, learned counsel for the appellant canvassed the same four grounds.

H *Grounds (a) and (b)*

[22] From the prosecution's case it is clear that PW5 was the only single witness upon which the entire prosecution's case was based and the s 27 information which was the evidence against the appellant came from the oral I testimony of PW5.

[23] In *Krishna Rao Gurumurthi & Anor v Public Prosecutor & Another Appeal* [2007] 4 CLJ 643 the Court of Appeal at p 662 said:

> … The way in which s 27 of the Evidence Act should be approached has been fairly worked out in the many decided cases that have discussed it. There are so many that it is neither feasible nor desirable to discuss them all here. But the common thread that runs through all of them is clear enough. It is that the section — like so many other areas in the law of evidence — rests on the twin pillars of reliability and accuracy. Accordingly, the first question that a court must ask itself is this: Did the accused ever make a discovery statement? This turns on the credibility of the policeman who gives evidence of the discovery statement. If the court is satisfied that the first question must be answered in the negative, that is to say, that the alleged statement is a fabrication, then that is the end of the matter and no further steps in the inquiry are necessary. But if the court decides that the first question should receive an affirmative response, then it must ask itself the second question. Is the version of the discovery statement put forward by the policeman giving evidence of it accurate enough to be acted upon? If the accuracy of the statement is in doubt then it should be rejected. Otherwise it should be accepted.

[24] Relying on the above proposition of law, learned counsel for the appellant submitted that it was important to determine first whether PW5 was a credible witness. It was his contention that PW5 was not credible because his oral evidence in court had been contradicted by:

(a) his own police reports; and

(b) the evidence of the other prosecution witnesses namely, PW7, PW9, PW10 and PW11.

[25] With regard to the first contradiction learned counsel for the appellant submitted that there was material contradiction as to how PW5 and his party gained access into the appellant's house in Batu Pahat. In his oral testimony, PW5 said he knocked on the door, identified himself and the door was opened by a woman whereupon he gained access. In cross-examination he maintained that he knocked on the front door. It was put to PW5 that he entered via the backdoor and not the front door. PW5 disagreed.

[26] However in his police report, exh P26, it stated that:

> … Apabila sampai di rumah tersebut, saya bersama anggota telah masuk ke dalam rumah melalui pintu belakang rumah dan menahan seorang lelaki Melayu yang sedang berbaring di atas katil dalam bilik hadapan sebelah kiri rumah …

[27] When confronted with exh P26, PW5 agreed that what was stated in exh P26 was true. PW5 explained in re-examination that according to the police standard operating procedure he knocked on the front door and in this case when he knocked on the front door there was no response. He then went to the back door, knocked on the back door and it was opened by a woman.

[28] In his judgment the learned trial judge had carefully considered this contradiction and ruled as follows:

> I have scrutinised PW5's evidence and opined that the said contradiction is not a material contradiction. The two versions only related to the issues as to how he gained access into the said house. It does not go into the facts in issue ie the factum of the recovery of the said drugs pursuant to the information given by the accused. Additionally under cross-examination he admitted he had made a mistake and stated that he gained access through the rear door. Under re-examination he said that initially he knocked the front door following standard operating procedure. When there was no response, he went to the back door, knocked on the back door and it was opened by a lady. I accepted his explanation. The events occurred about four years ago. Such mistake is bound to happen. It is not the law that just because a witness contradicted himself on one or two issues he is condemned forthright as an unreliable witness and that his entire testimony is to be rejected — see *Khoon Chye Hin v Public Prosecutor* [1961] MLJ 105 at p 107, para c, left. These contradictions are minor in nature and it has no effect on the credibility of PW5, bearing always the explanation that he had given.

[29] Next, learned counsel for the appellant submitted that there was contradiction between PW5's oral evidence and Parit Jawa Report No 1255/04 (exh P19). Exhibit P19 was the arrest report made by PW5. At the trial it was the version of PW5 that the appellant brought him and his men to his parent's house and then to the orchard behind the house where the appellant was said to have pointed out first to the cupboard and then to the various spots where the drugs were concealed respectively. In cross-examination it was put to PW5 that the appellant and the arrested persons were brought to the back of the house. PW5 did not agree. PW5 agreed with the defence suggestion that only the appellant was taken to the back of the house.

[30] In exh P19 it was stated that:

> … OKT kemudiannya telah membawa saya bersama C/Insp Ramesh, anggota dan juga 7 orang yang ditahan tadi ke belakang rumah. Sampai di belakang rumah OKT telah tunjukkan barang seperti berikut: …

[31] On this issue the learned trial judge said:

> In re-examination PW5 explained that what he meant was that the seven arrested persons were confined a little behind the place marked 'X' in exh P15(1) and maintained his position that the seven persons arrested were not brought to the scene where the drug exhs were recovered.
>
> Notwithstanding what was stated in his police report P19, I accepted PW5's oral testimony that the seven arrested persons were not brought to the places where the offending drugs were discovered on account that, contrary to learned counsel's averments, PW5's oral testimony was infact supported by the testimonies of PW8,

PW9 and PW10 that the seven arrested persons were not brought to the kawasan kebun where the offending drugs were discovered.

We shall now see what these 'orang awam' has got to say. I would opt to reproduced their testimonies as recorded in the Notes of Evidence for purposes of clarity than would otherwise be necessary.

[32] Learned counsel for the appellant submitted that the approach taken by the learned trial judge to resolve this issue by looking for corroborative evidence from the other witnesses was erroneous and was not in accordance with the law. It was the contention of learned counsel for the appellant that the learned trial judge had to decide first whether PW5 was credible based on his evidence and in the event the evidence points to the fact that he was not credible then no amount of corroboration could save him. In support of this contention learned counsel cited the cases of *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389; [2005] 2 AMR 750 and *TN Nathan v Public Prosecutor* [1978] 1 MLJ 134.

[33] It is trite that the inherent probability or improbability of a fact in issue must be the prime consideration in deciding whether a witness is credible or not. It is the duty of the court to sieve the evidence and to ascertain what are the parts of the evidence tending to incriminate the accused which he accepted. In *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1 at p 79 Augustine Paul J (as he then was) summed up the tests for determining the credibility of a witness as follows:

The Privy Council has stated that the real tests for either accepting or rejecting the evidence of a witness are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case (see *Bhojraj v Sitaram* 1936 AIR PC 60). It must, however, be observed that being unshaken in cross-examination is not per se an all-sufficient acid test of credibility. The inherent probability or improbability of a fact in issue must be the prime consideration (see *Muniandy & Ors v Public Prosecutor* [1966] 1 MLJ 257). It has been held that if a witness demonstrably tells lies, his evidence must be looked upon with suspicion and treated with caution, but to say that it should be entirely rejected would be to go too far (see *Khoon Chye Hin v Public Prosecutor* [1961] MLJ 105). It has also been held that discrepancies and contradictions there will always be in a case. In considering them, what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy (see *De Silva v Public Prosecutor* [1964] MLJ 81). The Indian Supreme Court has pointed out that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments (see *Ugar v State of Bihar* 1965 AIR SC 277). It is useful to refer to *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 where Raja Azlan Shah FJ (as His Highness then was) said at p 19:

> In my opinion, discrepancies there will always be, because in the circumstances in which the events happened, every witness does not remember the same thing and he does not remember accurately every single thing that happened … The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other.

> In the absence of any contradiction, however, and in the absence of any element of inherent improbability, the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted (see *Public Prosecutor v Mohamed Ali* [1962] MLJ 257).

[34] PW5 had explained the alleged contradiction by saying that the seven arrested persons were brought to the place marked X in exh P15(1) and maintained that the seven persons arrested were not brought to the places where the offending drugs were recovered. As can be seen from the photographs in exh P15 the place marked 'X' was different from the places where the drugs were recovered. What was said by PW5 was not inherently improbable and as such, with respect, we are unable to agree with the submission of learned counsel that there was material contradiction in PW5's evidence on this issue.

[35] Learned counsel for the appellant further submitted that there were contradictions in PW5's evidence as follows:

(a) PW5's oral evidence contradicted with the evidence of PW9, PW10 and PW11 as to whether the seven arrested persons were brought to the scene together with the appellant;

(b) PW5's oral evidence contradicted with the other prosecution witnesses on the aspect as to when was the appellant brought to his father's house;

(c) PW5's oral evidence contradicted the evidence of PW9, PW10 and PW11 as to whether the seven arrested persons were brought to the orchard; and

(d) PW5's oral evidence contradicted with the other prosecution witnesses as to whether the appellant pointed to the various spots.

[36] On this issue, the Court of Appeal had this to say:

> We have also scrutinised the records carefully and find that the learned trial judge spent a good part of his judgment assessing the evidence of the not only PW5, but all other witnesses for the prosecution in concluding that a prima facie case had been established. The learned trial judge was constantly mindful of the contradictions of the evidence before him. From pp 10–19 of the appeal record His Lordship had

directed his attention to the analysis of the evidence of the witnesses vis a vis the issue of contradictions and discrepancies in the evidence. At pp 21–25 of the record we also note that the learned trial judge has specifically addressed the issue of contradiction between the evidence of PW5 with that of PW9, and PW11 and finally concluded that PW5 was a credible witness. We pause here to note that the learned trial judge in carrying out his function as a trier of facts and reception of evidence was merely exercising his judicial discretion of accepting or rejecting the evidence of a particular witness. In this instant, His Lordship rejected certain parts of PW11's evidence and accepted the rest. Of course, the learned trial judge was entitled to do so (*Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 (FC), *Lee Ah Sang v Public Prosecutor* [2007] 6 MLJ 1; [2007] 5 CLJ 1, *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209 (FC), *Dato Mokhtar Hashim & Anor v Public Prosecutor* [1983] 2 CLJ 10 (FC), *Lai Kim Hon & Ors v Public Prosecutor* [1981] 1 MLJ 84 (FC), *Che Omar b Mohd Akhir v Public Prosecutor* [1999] 2 CLJ 780 (CA)).

It is within the purview of the learned trial judge's function to assess the credibility of witnesses who gave evidence before him. He had the audio visual advantage of assessing them. We have not. Further, it is also trite law that the appellate courts will always be slow to interfere in matters relating to the credibility of witnesses. It serves no useful purpose for us to again and again list down the line of authorities on this issue.

We are in no better position than the learned trial judge to assess the credibility of witnesses and in this case, PW5 in particular. In our considered views, this ground is devoid of any merit.

[37] The learned trial judge had given a maximum evaluation to PW5's evidence and found him to be credible. That finding was affirmed by the Court of Appeal. In *Tan Kim Ho & Anor v Public Prosecutor* [2009] 3 MLJ 151 at pp 164–165; [2009] 3 CLJ 236 at p 252 Zaki Tun Azmi CJ reiterated as follows:

It is an established principle of law that when dealing with finding of facts, the trial judge is more often than not, in a better position to decide. The appellate court must be reluctant to interfere with such findings, unless the facts obviously disclose the courts below had clearly and wrongly evaluated the facts.

In *Lee Ah Seng & Anor v Public Prosecutor* [2007] 6 MLJ 1; [2007] 5 CLJ 1 this court held:

The approach to be taken by an appellate court when dealing with a trial court's assessment of credibility of witness is well-established by high authorities. The credibility of a witness is primarily for the trial judge. An appellate court should always be slow in disturbing such finding of fact arrived at by the judge who had audio-visual advantage of the witness, unless there are substantial and compelling reasons for disagreeing with the finding. Discrepancies will always be found in the evidence of a witness but what a judge has to determine is whether they are minor or material discrepancies. It would be wrong to say just because a witness may have contradicted in his evidence or even told lies on one or two points, his

evidence should be totally rejected. In the final analysis it is for the trial judge to determine which part of the evidence of a witness he is to accept and which to reject (see *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209; [1969] 1 LNS 52 (FC); *Dato Mokhtar Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232; [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 (FC); *Lai Kim Hon & Ors v Public Prosecutor* [1981] 1 MLJ 84; [1980] 1 LNS 197 (FC); *Che Omar bin Mohd Akhir v Public Prosecutor* [1999] 2 MLJ 689; [1999] 2 CLJ 780 (CA)). It is not the function of an appellate court to make primary findings of facts (see *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457 (FC); [2005] 6 AMR 203.

[38] Assessing credibility is difficult and is best left to the trial judge who has the audio-visual advantage of a witness in action. In this case, the learned trial judge, in our view, had correctly evaluated PW5's evidence and found him to be a credible witness. The Court of Appeal had further assessed the learned trial judge's evaluation of that evidence and agreed with the learned judge's conclusion.

[39] We have gone through the evidence thoroughly ourselves and have come to the same conclusion that PW5 is a credible witness. Having said that we found no compelling reasons which require our appellate interference.

[40] As regards exh P17 learned counsel for the appellant also submitted that the learned trial judge misdirected himself when he failed to consider whether he ought to have excluded the s 27 information on ground of unfairness. Learned counsel for the appellant highlighted the following evidence. In his testimony the appellant said he was assaulted by PW5, Chief Inspector Ramesh and S/Major Najib in his Batu Pahat house. This allegation of assault was corroborated by DW2. The prosecution never called Chief Inspector Ramesh and S/Major Najib to rebut this allegation. The appellant also testified that he was also assaulted at the Tongkang Pechah Police Station by PW5. This part of his evidence was also supported by DW2.

[41] The appellant also testified that exh P17 was signed by him after the recovery of the drugs and not at the Tongkang Pechah Police Station. He said he signed it because he was threatened that should he refuse to do so his parents and wife would be detained as well. PW11 testified that while they were at the orchard and after the recovery of the drugs he heard the police threatened the appellant that if he did not admit the police would detain all the members of his family.

[42] Learned counsel for the appellant submitted that in the light of all these clear evidence the learned trial judge ought to have considered whether the s 27 information ought to be excluded and this non-direction amounted to a failure

of justice. In support of that he cited the decisions of this court in *Goi Ching Ang v Public Prosecutor* [1999] 1 MLJ 507 and *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389; [2005] 2 AMR 750.

[43] The party seeking to have the s 27 information excluded in the exercise of the discretion of the court has the onus of showing, on a balance of probability, that the discretion should be exercised in its favour. In *Francis Antonysamy v Public Prosecutor* the Federal Court, at p 406 (MLJ); pp 770–771 (AMR) said:

> It follows that *Goi Ching Ang v Public Prosecutor* cannot be understood to mean that a s 27 statement must be excluded in all instances where it was supplied involuntarily. Neither does that case profess to lay down such a rule. It was made clear by the Federal Court that it was considering the exclusion of the s 27 statement 'On the fact of this case …' (at p 524) and as stated at p 527:
>
> > … The facts and circumstances of the case show that the s 27 information obtained has an adverse effect on the fairness of the proceedings so that the learned trial judge ought not to have admitted it.
>
> Therefore, the Federal Court excluded the s 27 statement on the facts of that case. The rule is therefore not of universal application. It depends on the facts of each case. Thus the ratio that can be gleaned from *Goi Ching Ang v Public Prosecutor* is that a court, in considering the exclusion of a s 27 statement on the ground of involuntariness, must take into account the facts of the case and the degree of force used. In my opinion, the degree of involuntariness that can be said to be sufficient to exclude a s 27 statement in the exercise of the discretion of the court must be balanced against the fact that involuntariness is not a condition of admissibility of such a statement. Therefore the circumstances of involuntariness must indeed be extraordinary in order to exclude a statement on a ground which, in the first place, does not affect its admissibility in law. In this case, the defence's evidence is that the first accused supplied the information after the police had agreed not to take any action against the second accused and his wife. If the first accused had the coolness and the freedom of mind to negotiate with the police before supplying the information, I am of the view that the force used was not severe enough to warrant the exclusion of the information. In the circumstances, I declined to exercise my discretion to exclude the information supplied by the first accused.

[44] It is to be observed that it was the defence version that the appellant was assaulted by PW5 and his men at the appellant's house and Balai Polis Tongkang Pechah so that the appellant would admit that the drugs found in the appellant's house belonged to him. This is what the appellant said in his evidence (p 167 of the appeal record):

> Lepas dikejutkan oleh 3 orang polis, seorang India, Melayu dan Cina, saya ditunjukkan 3 bungkusan yang dikatakan dadah.

> Lepas isteri pulang ke rumah ketiga-tiga polis pukul saya supaya mengaku ketiga-tiga bungkusan itu kepunyaan saya. Saya dipukul di bahagian perut, dada dan peha. Ketiga-tiga anggota polis itu pukul saya. Ketiga-tiga mereka ada di Mahkamah sebelum ini. Mereka adalah Tuan Teng, Tuan Ramesh dan Sarjan Mejar Najib.
>
> Anggota polis Cina gari tangan isteri dan suruh isteri duduk atas kerusi. Masa itu anak sedang sekolah tadika dan anak kedua bersama isteri.
>
> Kira-kira jam 11.30 am anak sulung pulang dari sekolah dan anggota polis bawa kami bertiga ke Balai Polis Tongkang Pechah.
>
> Bila sampai Balai, saya ditahan berasingan dari isteri saya. Saya dibawa ke bilik soal siasat. Saya dipukul di bahagian perut, dada, kepala dan dahi dipukul dengan kayu. Masih ada kesan di atas kening kiri. Teng yang pukul saya di kening dengan kayu. Mereka ugut saya supaya mengaku dadah kepunyaan saya. Jika tidak mengaku mereka akan tahan anak dan isteri di penjara.

[45] It is to be noted that the drugs allegedly found in the appellant's house were not the subject matter of the three charges in the instant case. It was not the defence case that the police assaulted the appellant to obtain information relating to the drugs which were the subject matter of the three charges in the instant case. Under the circumstances it is our considered view that there was no reason for the learned trial judge to exercise his discretion to exclude the information supplied by the appellant on the ground that the appellant was assaulted.

[46] As stated earlier the appellant denied that he gave information to PW5 of the drugs found in the orchard in Sungai Balang Besar. He also denied that he had pointed to the spots where those offending drugs were recovered to the police at his father's place. He said he signed exh P17 in his father's house after those drugs were recovered by the police after two police officers threatened him. He did not identify the two police officers who allegedly threatened him.

[47] The learned trial judge had given a careful consideration to the question of whether the appellant did give the information as stated in exh P17. He made a finding that the information in exh P17 was given by the appellant. On this issue the learned trial judge said:

> Learned counsel contended that the accused did not give the information. However in exh P17, the accused's signature appeared twice. The accused did not dispute that the signatures were his. PW5 stated that upon interrogation at Balai Polis Tongkang Pechah, the accused admitted that he had kept drugs in the kawasan kebun behind his father's house at SBB 49, Sungai Balang Besar. PW5 immediately administered the caution under s 37(A)(2) of the DDA 1952. He put it into writing — exh P17 and affixed his signature below the caution after ascertaining that the accused did understand the caution. Then the accused also affixed his signature. Upon further questioning the accused admitted keeping drugs at the place aforesaid. PW5 also

reduced this information into writing and thereafter affixed his signature again. The accused also affixed his signature thereafter. These were the narratives given by PW5 explaining the events leading to the accused affixing his signatures on exh P17. These events were not seriously challenged by the accused except that now the accused claimed that he did not give the information voluntarily. He claimed to have been beaten into giving the said information. However as the authorities suggested, voluntariness is not a condition of admissibility of information supplied under s 27 of the Evidence Act 1950. Hence it is my findings that the accused in fact supplied the said information to PW5.

[48] The learned trial judge ruled that the appellant's defence was a mere denial. In other words the learned trial judge also found that the appellant's version that he did not give information in exh P17 to PW5 at the Balai Polis Tongkang Pechah was also a mere denial. On the facts of this case we find that there was no reason for the learned trial judge to exercise his discretion to exclude the information in exh P17. There was therefore no non-direction on this issue as contended by learned counsel for the appellant. For the aforesaid reason, we find no merit in learned counsel submission on this ground.

[49] Learned counsel for the appellant further submitted that in the instant case the prosecution had led two sets of evidence. They are as follows:

(a) whether the appellant was led to the place where the drugs were recovered together with the seven arrested persons; and

(b) whether at the place the appellant pointed out to the police the different spots where the drugs were buried.

[50] As regards this issue learned counsel for the appellant cited the cases of *Yusoff bin Kassim v Public Prosecutor* [1992] 2 MLJ 183; *Adzhaar bin Ahmad & Anor v Public Prosecutor* [1996] 4 MLJ 85; *Harchand Singh & Anor v State of Haryana* AIR 1974 SC 344; and *Lee Ah Seng & Anor v Public Prosecutor* [2007] 6 MLJ 1; [2007] 4 AMR 709. These cases laid down the proposition of law that if in a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. In his judgment the learned trial judge had this to say:

Equally on the same grounds enumerated in the earlier paragraphs, I rejected learned counsel's contention that the prosecution has led two sets of evidence, one by PW5 that only the accused was brought to the scene and at the scene the accused pointed, and the other set by PW9, PW10 and PW11 wherein PW9 and PW11 testified that at the scene the accused never pointed. On the facts and evidence I am satisfied and it is equally my findings that there is only one set of evidence procured from the said prosecution witnesses, namely, only the accused was brought to the scene and at the scene the accused pointed.

[51] On the issue of whether the appellant was led to the place where the drugs were recovered together with the seven arrested persons we have considered the issue earlier and we accepted PW5's explanation and agreed with the learned trial judge's finding that the seven arrested persons were never brought to the places where the drugs were recovered. As to the issue of whether the appellant pointed out to the spots where the drugs were buried we agree with the finding of the learned trial judge who accepted the version given by PW5. We also agree with the following reasons given by the learned trial judge for accepting PW5's version on this issue:

> … Likewise PW5's evidence that the accused pointed to the places where the offending drugs were not shaken. He could not have discovered and recovered the drugs without the accused pointing to the same as the said drugs were very well hidden inside the coconut mounds. What more when that was the first time that PW5 and his team had visited the SBB house and the *kawasan kebun*. This part of PW5's was not also challenged by the defence. Going to the SBB house based on the accused's address printed on his NRIC is one thing but zeroing precisely to where the offending drugs were discovered is rather in impossibility without the information given by the accused and without the accused pointing to the same. The burying of the drugs were scattered all over the *kawasan kebun*, several meters apart from each other.

[52] For the reasons given above we find grounds (a) and (b) of the appellant's appeal to be devoid of any merit.

Ground (c)

[53] Learned counsel for the appellant submitted that both C/Insp Ramesh and S/Major Najib are key witnesses to the prosecution's case and that they ought to be called. They were with PW5 at all times and in view of the unconvincing nature of the evidence of PW5 both of them should have been called. According to learned counsel for the appellant their evidence would answer the following questions:

(a) whether the appellant was assaulted at the Batu Pahat house and at the police station;

(b) whether it was the appellant who gave the information in exh P17 at the police station;

(c) whether the appellant alone was brought to the orchard behind the house or whether he was brought together with the seven arrested persons; and

(d) whether the appellant was threatened to sign exh P17.

[54] This issue was argued in the Court of Appeal and after having heard the submissions the Court of Appeal decided the issue as follows:

It is the finding of the learned trial judge that the contradictions in the evidence of PW5 were either immaterial or minor and had accepted PW5's evidence. The evidence of PW5 was held to be credible enough and sufficient to prove the ingredients of the charges preferred against the appellant. His Lordship ruled that the case did not fall within the category of cases where the testimony of the single witness itself required that corroboration should be insisted upon as a rule of prudence, (see *Balachandran v Public Prosecutor* [2005] 1 CLJ 85). It is trite that the testimony of a single witness, if believed, is sufficient to establish any fact (see *Khaw Cheng Bok & Ors v Khaw Cheng Poon & Ors* [1998] 3 MLJ 457). Witnesses are weighed, not counted (testes ponderantur non numerantor).

The right to call or not to call a particular witness lies solely with the prosecution. But where the prosecution's evidence falls short of proving a prima facie case at the end of its case, the right not to call such witness/witnesses and to make him available to the defence will be of no avail. The present appeal is not such a case. In our view, the non calling of these two witnesses does not create a gap in the prosecution's case. Their evidence is not material for the unfolding of the narratives of the prosecution's case. The prosecution was content with the evidence of PW5 to prove their case against the appellant, without calling Chief Inspector Ramesh and Sarjan Mejar Ahmad Rosli to testify. That is their prerogative. The learned trial judge found (in our view rightly) that PW5's evidence together with the evidence of other witnesses called by the prosecution was sufficient to make out a prima facie case against the appellant.

[55] PW5 was a police witness. The learned trial judge found him to be a credible witness. It is true that the prosecution's case rested solely on the evidence on PW5. However, under the law there is no requirement for his evidence to be corroborated. The learned trial judge believed PW5 and as such his evidence was sufficient to establish the case for the prosecution. Any requirement for PW5's evidence to be corroborated will conflict with s 134 of the Evidence Act 1950 which provides that no particular number of witnesses shall in any case be required for proof of any fact (see *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85).

[56] We are therefore in complete agreement with the finding of the Court of Appeal on this issue and as such we find no merit in the argument put forward by the appellant.

Ground (d)

[57] Learned counsel for the appellant submitted that the learned trial judge failed to appreciate the defence case. It was contended that the learned trial judge had erred when he held that the appellant's defence was a mere denial and the learned trial judge was wrong to rule that DW2's evidence was a fabrication.

[58] Learned counsel for the appellant submitted that from the evidence of both the appellant and DW2 the following primary facts emerged:

(a) that the police party gained entry to house No 503 through its back door;

(b) the appellant was assaulted by the police party in house No 503;

(c) that DW2 and her two children were brought by the police party to the police station at Tongkang Pechah;

(d) that at the Balai Polis Tongkang Pechah, the appellant was assaulted;

(e) that exh P17 was not signed by the appellant at Balai Polis Tongkang Pechah but at his parent's house;

(f) that upon arrival at his parent's house, the appellant was not immediately brought into the house but brought to a mosque nearby. The appellant was brought to the kitchen of his parent's house about one hour later;

(g) that the appellant and the seven others were brought to the orchard; and

(h) that the police recovered the drugs from the old cupboard and the coconut mounds themselves. The accused did not point to the various spots where the drugs were concealed.

[59] At the conclusion of the trial, s 182A of the Criminal Procedure Code imposes a duty on the trial court to consider all the evidence adduced before it and to decide whether the prosecution has proved its case beyond reasonable doubt. The defence of the accused must be considered in the totality of the evidence adduced by the prosecution, as well as in the light of the well established principles enunciated in *Mat v Public Prosecutor* [1963] 1 MLJ 263 with regard to the approach to be taken in evaluating the evidence of the defence. In *Mohamed Yatin Bin Abu Bakar v Public Prosecutor* [1950] MLJ 57 Spenser-Wilkinson J, at p 59, opined:

> In an ordinary case, where no special burden of proof or explanation is by law cast upon the accused, his position is more favourable than it is in those cases where the law presumes something against him. The principle laid down in the recent English cases, particularly *Mancini v Director of Public Prosecutions* appears to me to be that, where no special onus is cast by law upon the accused, then, if his story has the effect of raising a reasonable doubt as to the truth of the prosecution case, he is entitled to an acquittal; and this is the 'ordinary rule' which is referred to in the passage above quoted from *Rex v Garth*. In this country, at the close of the case for the prosecution the Court will not call upon the accused for his defence unless the evidence of the prosecution witnesses is, in the first instance, believed. *If, when called upon for his defence the accused gives evidence, then the question is, not which story is to be believed, but whether, even if the Court is not inclined to accept all that the accused has said, his evidence does not raise a reasonable doubt as to the truth of the prosecution evidence or as to the accused's guilt.* (Emphasis added.)

[60] It must be observed that the facts mentioned in sub-paras (a)–(d) of para 58 of this judgment are not relevant to the offences in the instant appeal. They were only relevant for the defence in the charge relating to the drugs found in the appellant's house for which he was charged in the magistrate's court. As such the evidence relating to those facts could not give rise to a doubt in the prosecution's case in the instant appeal.

[61] The evidence which were relevant and which could give rise to a doubt in the prosecution's case as adduced by the defence were that exh P17 was not signed by the appellant at Balai Polis Tongkang Pechah but at the house of the appellant's parent and that the appellant did not point to the various spots where the offending drugs were recovered. These evidence could raise a reasonable doubt as to whether the appellant was in possession of the offending drugs. However, as could be seen from the judgment of the learned trial judge, the learned trial judge made a finding that the defence case was a mere denial. We found that the learned trial judge had carefully considered and fully appraised the defence evidence in accordance with well established principles as stated in *Mat v Public Prosecutor* and *Mohamed Yatin bin Abu Bakar v Public Prosecutor*.

[62] The Court of Appeal agreed with the learned trial judge that the totality of the evidence put forth by the appellant was a mere denial and was insufficient to cast a reasonable doubt on the prosecution's case. The appellant also failed to rebut the statutory presumption of trafficking invoked against him. On the evidence before us we are in agreement with the findings of the learned trial judge and the Court of Appeal judges that the defence has failed to cast a reasonable doubt on the prosecution's case.

CONCLUSION

[63] We have read the record with care. We have carefully scrutinised the evidence. We are satisfied that the guilt of the appellant was proved beyond a reasonable doubt and his convictions are safe. Accordingly the appeal is dismissed. The convictions and sentences imposed by the High Court are affirmed.

Appeal dismissed and convictions and sentences imposed by the High Court affirmed.

Reported by Afiq Moahamad Noor